



**Title 22 (Examining Boards)
Texas Administrative Code
Part 34
Chapter 781**

**Rules Relating to the Licensing and
Regulation of Social Workers**

Adopted by the Texas State Board of Social Worker Examiners
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Subchapter A. General Provisions.

§781.101. Purpose and Scope.

(a) The purpose of this chapter is to implement the provisions in the Social Work Practice Act (Act), Occupations Code Chapter 505, concerning the licensure and regulation of social workers.

(b) The Act restricts the use of the titles "social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," "licensed clinical social worker" or "social work associate" or any other title that implies licensure or certification in professional social work services.

(c) A person not represented to the public, directly or indirectly, as a social worker is exempt from this chapter.

(d) This chapter covers the organization, administration, and general procedures and policies of the Texas State Board of Social Worker Examiners.

(e) The Act and this chapter apply to every licensee even if the licensee is involved in activities or services exempt under the Act, §505.003.

§781.102. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited colleges or universities--An educational institution that is accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(2) Act--The Social Work Practice Act, Occupations Code, Chapter 505.

(3) ALJ--A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

(4) Agency--A public or private employer, contractor or business entity providing social work services.

(5) AMEC--alternative method of examining competency, as referenced in Occupations Code, §505.356(3).

(6) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(7) Association of Social Work Boards (ASWB)--National organization representing regulatory boards of social work. Administers the national examinations utilized in the assessment for licensure.

(8) Board--Texas State Board of Social Worker Examiners.

(9) Case record--Any information related to a client and the services provided to that client, however recorded and stored.

(10) Client--An individual, family, couple, group or organization that seeks or receives social work services from a person identified as a social worker who is either licensed or unlicensed by the board. An individual, family, couple, group or organization remains a client until the formal termination of services.

(11) Clinical social work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. Treatment methods include the provision of individual, marital, couple, family, and group therapy and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities.

(12) Clinical supervision--An interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

(13) Confidential information--Individually identifiable information obtained from a client or records relating to a client, including the client's identity, demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of social work services to an individual; the past, present, or future payment for the provision of social work

services to an individual; and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual which is not discloseable under applicable law or court rules of evidence. Client information is "confidential" if it is intended to be disclosed to third persons to further the interest of the client in the diagnosis, examination, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.

(14) Completed application--The official social work application form, fees and all supporting documentation which meets the criteria set out in this title (relating to Required Application Materials).

(15) Conditions of exchange--The setting of rates of reimbursement or fee structure and business rules or policies involving issues such as cancellation of appointments, office hours, and management of insurance claims.

(16) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(17) Counseling--A method used by social workers to assist individuals, couples, families or groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(18) Consultation--To provide advice, opinions and to confer with other professionals regarding social work practice.

(19) Continuing education--Formal or informal education or trainings, which are oriented to maintain, improve or enhance social work practice.

(20) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(21) Department--Department of State Health Services.

(22) Detrimental to the client--An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

(23) Direct practice--The provision of services, research, system linkage, system development, maintenance and enhancement of social and psychosocial functioning of clients.

(24) Dual relationship--Dual or multiple relationships occur when social workers relate to clients in more than one capacity, whether it be before, during or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

(25) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(26) Examination--A standardized test or examination of social work knowledge, skills and abilities, which has been approved by the board.

(27) Exploitation--An unequal balance is inherent in the client/professional relationship and may be present in the professional/professional relationship. To use this power imbalance for the personal benefit of the professional at the expense of the client or another professional is exploitation. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(28) Exploitive behavior--A pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the social worker rather than in the best interest of the client or at the expense of another professional. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(29) Family systems--An open, on-going, goal-seeking, self-regulating, social system. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, sexual orientation, health and temperament) and its socio-cultural and historic position in its larger environment.

(30) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(31) Flagrant--Obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.

(32) Fraud--Any misrepresentation or omission by a social worker related to professional qualifications, services, or related activities or information that benefits the social worker.

(33) Full-time experience--Social work services totaling 30 or more hours per week.

(34) Group supervision--Supervision that involves a minimum of two and no more than six supervisees in a supervision hour.

(35) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(36) Home study--A formal written evaluation or social study to determine what is the best interest of a minor child or other dependent person.

(37) Independent clinical practice--The provision of clinical social work in independent practice in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(38) Independent non-clinical practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(39) Independent practice--The practice of social work services outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(40) Indirect practice--Work on behalf of the client utilizing negotiation, education, advocacy, administration, research, policy development and resource location that does not involve immediate or personal contact with the clients being served.

(41) Individual supervision--Supervision of one supervisee during the supervision session.

(42) Investigator--A professional utilized by the board in the investigation of allegations of professional misconduct.

(43) LBSW--Licensed Baccalaureate Social Worker.

(44) LCSW--Licensed Clinical Social Worker.

(45) License--A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

(46) Licensee--A person licensed or recognized by the board to perform professional social work practice.

(47) LMSW--Licensed Master Social Worker.

(48) LMSW-AP--Licensed master social worker-advanced practitioner.

(49) Non-clinical social work--The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, non-clinical consultation and other related social work activities.

(50) Part-time--Social work services totaling less than 30 hours per week.

(51) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the ALJ as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(52) Persistently--Existing for a long or longer than usual time or continuously.

(53) Person--An individual, corporation, partnership, or other legal entity.

(54) Pleading--Any written allegation filed by a party concerning its claim or position.

(55) Psychotherapy--The use of treatment methods utilizing a specialized, formal interaction between a clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand intrapersonal, interpersonal and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

- (56) Reciprocity--The granting of an official license based on the current status of licensure in a different jurisdiction. Reciprocity is granted based on the formal written agreement between the board and regulatory body in the other jurisdiction.
- (57) Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.
- (58) Rules--Provisions in this chapter specifying the implementation of statute and operations of the board and individuals affected by the Act.
- (59) Sexual contact--Any touching or behavior that can be construed as sexual in nature.
- (60) Sexual exploitation--A pattern, practice or scheme of exploitative behavior, which may include sexual contact.
- (61) Social Work Case Management--The use of a biopsychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client.
- (62) Social worker--A person licensed under the Act.
- (63) Social work practice--Services and actions performed as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of social work is guided by special knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, case management, supervision of social work services, counseling, assessment, and evaluation. Social work practice may also be referred to as social work services, of social welfare policies and services, social welfare systems and resources, human services.
- (64) Supportive counseling--The methods used by social worker to help individuals create and maintain adaptive patterns. Such methods may include building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups,

- and providing reassurance and support. This type of social work is not considered clinical social work.
- (65) Supervisor, board approved--A person meeting the requirements set out in §781.302 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.
- (66) Supervision--The professional interaction between a supervisor and a social worker in which the supervisor evaluates and directs the services provided by the social worker and promotes continued development of the social worker's knowledge, skills and abilities to provide social work services in an ethical and competent manner.
- (67) Supervision hour--A supervision hour is a minimum of 60 minutes in length.
- (68) Telepractice--Interactive service delivery where the client resides in one location and the professional in another.
- (69) Termination--The end of professional services, meetings, and billing for services.
- (70) Texas Open Meetings Act--Government Code, Chapter 551.
- (71) Texas Public Information Act--Government Code, Chapter 552.
- (72) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

Subchapter B. The Board.

§781.201. Board Rules.

- (a) The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.
- (b) Submission of the petition.
- (1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

- (A) a brief explanation of a justification for the proposed rule;
- (B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;
- (C) a statement of the statutory or other authority under which the rule is to be promulgated; and
- (D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The board office may determine the petition does not contain the information described in paragraph (2) of this subsection and shall return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rulemaking procedures in accordance with the APA, the Government Code, Chapter 2001. The board may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule that the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption

of the same or similar rules submitted within six months after the date of an initial position.

§781.202. Board Meetings.

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) The chairperson may call a meeting after consultation with board members or by a majority of members so voting at a meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act.

(d) The chairperson may invite comments or statements from non-board members on all agenda items, but may limit the time allotted to each individual. The board may not act on comments or statements related to issues not on the agenda.

(e) Interpreters and other reasonable accommodations necessary to facilitate public participation will be made available as requested. The executive director must receive notice that reasonable accommodations will be needed at least 10 days in advance of the board or committee meeting.

§781.203. Board Training. A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act.

§781.204. Transaction of Official Board Business.

(a) The board may transact official business only when in a legally constituted meeting with a quorum present. A quorum of the board necessary to conduct official business is five members.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(c) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

§781.205. Board Agendas.

(a) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson.

(b) Requests for items to be placed on the agenda must be submitted to the executive director at least 30 days in advance of the scheduled meeting.

(c) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§781.206. Board Minutes.

(a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.

(b) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

§781.207. Elections.

(a) At the first meeting following the last day of January of each year, the board shall elect a vice-chair.

(b) A vacancy, which occurs in the office of vice-chair, may be filled at any meeting.

§781.208. Officers of the Board.

(a) Chair.

(1) The chair shall preside at all meetings of the full board at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(2) The chair is authorized by the board to make day-to-day decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(b) Vice-chair.

(1) The vice-chair shall perform the duties of the chair in case of the absence or disability of the chair.

(2) In case the office of the chair becomes vacant, the vice-chair shall serve until a successor is appointed.

§781.209. Committees of the Board.

(a) The board or the chair may establish committees deemed necessary to carry out board responsibilities.

(b) The chair shall appoint members of the board to serve on committees and shall appoint the committee chairs.

(c) Only members of the board may be appointed to board committees.

(d) Committee chairs shall make regular reports to the board in interim written reports or at regular meetings.

(e) Committees may direct all reports or other materials to the executive director for distribution.

(f) Committees shall meet when called by the committee chair or when so directed by the board or the board chair.

(g) Each committee shall consist of least one public member and one professional member, unless the board authorizes otherwise. At least one public member of the board shall be appointed to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

§781.210. Executive Director.

(a) The executive director of the board shall be an employee of the department who serves as the administrator of board activities.

(b) The executive director serves at the will of the board.

(c) The executive director shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board unless the board designates another custodian.

(d) The executive director shall exercise general supervision over persons employed in the administration of the

Act. The executive director may delegate responsibilities to other staff members when appropriate.

(e) The executive director shall be responsible for the investigation and presentation of complaints.

(f) The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(g) The executive director shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure and renewal. Determinations made by the executive director that propose denial of licensure are subject to the approval of the appropriate committee of the board or the board which shall make the final decision on the eligibility of the applicants.

§781.211. Reimbursement for Expenses.

(a) A board member is entitled to per diem in the same amount set for state employees by the General Appropriations Act and travel expenses to and from meetings.

(b) Payment to members of per diem and transportation expenses shall be on official department vouchers.

§781.212. Official Records of the Board.

(a) Records that are public may be reviewed by inspection or duplication, or both in accordance with the Texas Public Information Act. Confidential records will not be made available.

(b) When any person's request would be unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving copies at the requester's cost.

(c) Applicable costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester. The charge for copies shall be the same as set by the department for copies.

(d) The rules of procedure for inspection and duplication of public records contained in the Texas Public Information Act shall apply to requests received by the board.

§781.213. Impartiality and Non-discrimination.

(a) The board shall make all decisions in the discharge of its statutory authority without regard to any person's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§781.214. Applicants with Disabilities.

(a) The board shall comply with applicable provisions of the Americans with Disabilities Act.

(b) Applicants with disabilities shall inform the board in advance of any reasonable accommodations needed.

§781.215. The License.

(a) The board shall prepare and provide to each licensee a license certificate, which contains the licensee's name and license number. License certificates will indicate the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will also indicate the date that the license expires, unless it is renewed. The board shall have a method to indicate the new expiration date of a license which has been renewed. The license certificate will also include any specialty recognition or supervisory status, if applicable.

(b) Regular licenses shall be signed by the board chairperson and executive director and be affixed with the seal of the board.

(c) Temporary and provisional licenses shall be printed on board letterhead and signed by the executive director.

(d) All licenses issued by the board remain the property of the board and must be surrendered to the board on demand. The board maintains jurisdiction over a licensee until the license is returned to the board.

§781.216. Roster of Licensees.

(a) The board shall publish a roster of licensees at its discretion.

(b) The roster of licensees shall include, but not be limited to, the name and address of current licensees.

(c) The board shall mail a copy of the roster to each licensee, and upon request, copies to other state agencies and the general public.

§781.217. Fees.

(a) The following are the board's fees:

(1) application fee for all licenses, approved supervisory status, waiver of the experience requirement for independent practice recognition, or specialty recognition--\$20;

(2) license fee for LBSW, or LMSW--\$60 biennially;

(3) renewal fee for LBSW or LMSW--\$80 biennially;

(4) license fee for LCSW--\$100 biennially;

(5) renewal fee for LCSW--\$100 biennially;

(6) additional license fee for specialty recognition (AP or Independent Practice)--\$20 biennially;

(7) additional or replacement license fee--\$10;

(8) fee for late renewal:

(A) 1-90 days--renewal fee plus fee equal to one-half the current contracted examination fee rounded to the nearest dollar amount; or

(B) 91 days, but less than one year--renewal fee plus fee equal to the current contracted examination fee rounded to the nearest dollar amount;

(9) inactive status conversion fee--\$30;

(10) reactivation from inactive status--renewal fee for license and endorsements;

(11) inactive status renewal fee--\$30 biennially;

(12) returned check fee--\$25;

(13) written license verification fee--\$10 per verification copy;

(14) specialty license verification fee--\$10 per verification copy;

(15) student loan default reinstatement fee--\$35;

(16) continuing education provider application fee--\$50 annually;

(17) delinquent child support administrative fee--\$35;

(18) legislatively mandated fees per licensee for the operation of the Office of Patient Protection per application and renewal as legislatively established;

(19) legislatively mandated fees per licensee for the boards participation in the Texas On-line per application and renewal as legislatively established;

(20) board approved supervisor fee--\$25 annually;

(21) AMEC participant administrative fee--Fee equal to the current contract examination fee;

(22) Petition for re-examination fee--\$20 per petition; and

(23) Temporary license fee--\$30.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.305 of this title (relating to Application for Licensure).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, repayment of funds after a returned check, including the returned check fee, must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (for example, insufficient funds, account closed, or payment stopped) is invalid. A license will be considered expired and the licensee in violation of board rules until the receipt and processing of the renewal fee and returned check fee by the board.

Subchapter C. Licenses and Licensing Process.

§781.301. Qualifications for Licensure.

(a) The following education and experience is required for the specified licenses and specialty recognitions:

(1) Licensed Clinical Social Worker (LCSW).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(D) Passing score on the clinical exam administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) A doctoral or master's degree in social work from a CSWE accredited social work program.

(B) Passing score on the intermediate or master's exam administered nationally by ASWB.

(3) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time non-clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within

the five previous calendar years occurring from the date of application.

(D) Passing score on the advanced or advanced generalist examination administered nationally by ASWB.

(4) Licensed Baccalaureate Social Worker (LBSW).

(A) A baccalaureate degree in social work from a CSWE accredited social work program.

(B) Passing score on the basic or Bachelors exam administered nationally by ASWB.

(b) Only a person who is licensed and has been recognized by the board as follows is qualified to provide clinical and non-clinical social work services in employment or independent practice settings.

(1) A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting. A LCSW may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(2) A LMSW-AP may provide any non-clinical social work services in either an employment or an independent practice setting. A LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(3) A LBSW or LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. A LBSW or LMSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(4) A LBSW or LMSW recognized for independent practice and a LMSW-AP must restrict his or her independent practice to the provision of non-clinical social work services.

(c) After August 31, 2007, a licensee that had not submitted an application for Independent Practice Recognition and an application for waiver of supervised experience requirements, along with the appropriate fees and supporting documentation and whose application is still pending must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized

by the board unless the person is licensed in another profession and acting solely within the scope of that license. If engaged in professional practice under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or independent practice recognition.

(d) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services such as in home health care or the use of telephones or other electronic media to provide services in an emergency.

(e) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice or is not exempt under subsection (c) of this section, may only practice for remuneration in a direct employment or agency setting and can not work under contract, bill directly to patients or to third party payers, unless the LBSW or LMSW is under a formal supervision plan approved by the board.

(f) Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§781.302. Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition.

(a) A person who has obtained only the temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the issuance of the regular license.

(b) An LMSW who plans to apply for the LCSW or LMSW-AP must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision. If the LMSW fails to submit a supervisory plan, then the LMSW's supervisor must provide to the supervisee who in turn will need to submit to the board documentation regarding dates, times and summary of all supervisory

sessions at the time the LMSW submits a clinical/non-clinical supervision verification form;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an AP or LCSW, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors. Only one supervisory plan may be in place at any time.

(c) A LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision. If the LBSW or LMSW fails to submit a supervisory plan, then the supervisor for the LBSW or LMSW must provide to the supervisee who in turn will need to submit to the board documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW submits a non-clinical supervision verification form;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors. Only one supervisory plan may be in place at any time.

(d) A licensee who is required to be supervised as a condition of initial or continued licensure must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(e) A licensee who is required to be supervised as a result of disciplinary action must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he

or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(f) A LBSW or an LMSW who has been approved for a probationary license under supervision while participating in the AMEC program must follow the application and supervision requirements in §781.313 of this title (relating to Alternate Method of Examining Competency).

§781.303. Independent Practice Recognition.

(a) A LBSW or LMSW who seeks to obtain board approval for the recognition of independent practice shall meet requirements and parameters set by the board.

(1) To qualify for the recognition of independent practice, as a LBSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(2) To qualify for the recognition of independent practice, as a LMSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(3) To qualify for independent practice the licensee must complete a minimum of 100 hours of face-to-

face supervision, over the course of the 3000 hours of full-time experience, with a board approved supervisor. A licensee who plans to apply for independent practice recognition shall:

(A) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the licensee fails to submit a supervisory plan, then the licensee will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the licensee makes application for the upgrade.

(B) submit a current job description from the agency the social worker is employed in with a verification of authenticity from the agency director or their designee on agency letterhead.

(C) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an independent practice, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee.

(D) submit a new supervisory plan within 30 days of changing supervisors.

(E) An individual providing supervision to a LBSW shall be a LBSW, LMSW, LMSW-AP or LCSW. An individual providing supervision to a LMSW shall be a LMSW, LMSW-AP or LCSW. In addition to the required licensure, the supervisor shall be board-approved and have attained the recognition of independent practice.

(4) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

(5) The board may use the twenty common law factors developed by the Internal Revenue Service (IRS) as part of their determination process regarding whether a worker is an independent contractor or an employee.

(A) No instructions to accomplish a job.

(B) No training by the hiring company.

(C) Others can be hired by the independent contractor (sub-contracting).

(D) Independent contractor's work is not essential to the company's success or continuation.

(E) No time clock.

(F) No permanent relationship between the contractor and company.

(G) Independent contractors control their own workers.

(H) Independent contractor should have enough time available to pursue other jobs.

(I) Independent contractor determines location of work.

(J) Independent contractor determines order of work.

(K) No interim reports.

(L) No hourly pay.

(M) Independent contractor often works for multiple firms.

(N) Independent contractor is often responsible for own business expenses.

(O) Own tools.

(P) Significant investment.

(Q) Services available to the public by having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(R) Profit or loss possibilities.

(S) Can't be fired.

(T) No compensation if the job isn't done.

(b) A LBSW or LMSW who seeks to obtain a waiver of the supervision and experience requirement for independent practice recognition as set forth by the board in subsection

(a)(1) - (3) of this section must submit an application for licensure/upgrade/specialty recognition and the Special Application For Waiver of Supervision and Experience Requirements, along with required documentation and the application fees no later than August 31, 2007. An application for waiver will be evaluated and either approved or denied. No partial credit will be given toward the supervised experience requirement, if an application for the waiver is denied. In order to be granted the waiver, the LBSW or LMSW must fully meet the following requirements and parameters set by the board:

(1) two years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed social worker (LCSW, LMSW-AP, LMSW, LBSW);

(2) three years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed mental health professional (LCSW, LMSW-AP, LMSW, LBSW, LMFT, LPC, LCDC, Psychologist, Psychiatrist, Psychiatric Nurse or other mental health professional accepted by the board);

(3) four years full time (paid or voluntary) social work experience while fully licensed as a social worker in an agency setting with or without the supervision of a licensed mental health professional; or

(4) four years full time (paid or voluntary) social work experience while fully licensed as a social worker without supervision in a setting that meets the criteria in subsection (a)(5) of this section.

(c) An applicant may appeal staff decision regarding their qualifications toward the waiver to the appropriate board committee within 30 days of receipt of staff decision. The decision of the board committee is final.

(d) A LBSW or LMSW who applies for the independent practice recognition and the waiver of experience requirements before August 31, 2007, must cease and desist independent practice immediately if his or her application for the waiver of the supervised experience requirement is finally denied. An LBSW or LMSW whose application has been denied may practice independently when a supervision plan for independent practice has been approved by the board.

§781.304. Recognition as an Approved Supervisor and Supervision Process. A person who wishes to be a board approved supervisor must file an application, and pay the applicable fee.

(1) A board approved supervisor must:

(A) be a LBSW, LMSW, LCSW or LMSW-AP in good standing or hold the equivalent social work license or certification in another state;

(B) take professional responsibility for the social work services provided within the supervisory plan;

(C) have completed a supervisor's training program acceptable to the board;

(D) currently be engaged in the practice of social work and self-identified as a social worker;

(E) submit the required documentation and fee to the board for approval;

(F) pay the annual Board Approved Supervisor fee as listed in §781.217 of this title (relating to Fees); and

(G) when approved as a supervisor by the board, the licensees may perform supervisory functions indicated:

(i) a LCSW may supervise clinical experience toward the LCSW, Non-clinical experience toward the Advanced Practice, non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(ii) an LMSW-AP may supervise non-clinical experience toward the Advanced Practice, non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iii) an LMSW with the Independent Practice Recognition may supervise non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iv) an LMSW who does not hold the independent practice recognition may only supervise probationary license holders under the AMEC program;

(v) a LBSW with the Independent Practice Recognition may supervise a LBSW's non-clinical experience toward the Independent Practice Recognition, a LBSW under probationary initial or continued licensure, board ordered probated suspension, probationary LBSW license holders under the AMEC program; or

(vi) a LBSW who does not hold the independent practice recognition may only supervise probationary LBSW license holders under the AMEC program.

(2) On receipt of the application to be a board approved supervisor, fee and verification of qualifications, the board will issue a letter notifying the licensee of approval as a board approved supervisor.

(3) On receipt of the approved supervisor fee, the board will issue a letter certifying that the individual is an approved supervisor. A licensee who is approved as a supervisor remains approved as a supervisor until the licensee requests to be removed as a supervisor.

(4) An approved supervisor must renew their approved supervisor status annually. An approved supervisor who fails to renew their approved supervisor status must reapply and meet the current requirements for approved supervisor status.

(5) A supervisor must maintain the qualifications described in paragraph (1) of this section while he or she is providing supervision.

(6) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(A) There can be no more than six individuals in a supervision group.

(B) There may be:

(i) no fewer than four hours of supervision shall occur each calendar month;

(ii) no fewer than two supervisory sessions shall occur each month;

(iii) each supervisory session shall be at least one hour in duration;

(iv) no more than 10 hours of supervision is allowed during any calendar month.

(7) A calendar month is creditable only if the supervision began no later than the first work day of the month and ended no sooner than the last calendar day of the month.

(8) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director of the board or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(9) Supervision must extend over a full 3000 hours.

(10) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the board.

(11) A board-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(12) The supervisor must be responsible for establishing all conditions of exchange with the clients served by her or his supervisee.

(13) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time the supervision plan or verification is submitted to the board.

(14) A supervisor may not be "employed by" or "under the employment supervision of" the person whom he or she is supervising.

(15) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(16) During the period of supervised experience, a supervisee may be employed on a salary basis or volunteer within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(17) All supervision submitted in fulfillment of the board's requirements must have been on a formal basis arranged prior to the period of supervision. Supervisory arrangements must include all specific conditions agreed to by the supervisor and supervisee.

(18) No payment for services will be made directly by a client to the supervisee.

(19) Client records are the responsibility of the agency and shall remain the property of the agency and not the property of the supervisee.

(20) A supervisor shall submit billing reflective of the services provided and the provider of that service. All billing documents for services provided by the supervisee shall reflect the license held by the supervisee and that the licensee is under supervision.

(21) Supervision received during time when either the supervisor or supervisee has an expired license will be accepted only on approval by the board of an appeal.

§781.305. Application for Licensure.

(a) An application for licensure must be on the official form designated by the board. Application packets, which include the application form, are available on request.

(b) The application process begins when the completed application form and fee are received in the board office.

(c) Receipt of an application form will be acknowledged by a letter from the executive director within 15 working days of receipt. The letter will include:

- (1) the licensing or recognition category requested;
- (2) deficiencies in documented qualifications, if any; and
- (3) additional documentation necessary for examination approval. This could include transcripts, supervisory references and other documents, which verify qualifications.

(d) A letter approving the applicant to sit for the examination will be mailed within 15 working days of the receipt of all required documentation.

(e) If an applicant fails to fully document his or her qualifications and/or fails to pass the examination within 12 months of filing the application, his or her application will be voided and reapplication may be required. If the applicant fails the examination, reexamination will be required prior to the expiration of the application.

(f) If the applicant passes the examination, the executive director shall mail a notice of approval stating the fee for initial licensure.

(g) When the applicant has met all other qualifications for licensure and on receipt of the license fee in the board office, licensure for the LCSW, LMSW, LBSW, or specialty recognition will be immediately granted.

(h) In the event an application is not processed in the time periods stated in this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made, in writing, to the executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. The executive director will respond to the request for refund within 30 days from the date it is received. Good cause for exceeding the time period is considered to exist if the number of applications for license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(i) If a request for reimbursement under this section is denied by the executive director, the applicant may appeal to the chairperson of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairperson at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chairperson shall provide written notice of the chairperson's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

§781.306. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form made under oath with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts. Educational requirements must be met by completion of educational programs at colleges or universities accredited by CSWE.

(2) Degrees for licensure as a LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE. (Current written verification of a program's CSWE candidacy status must be on file with the board.) College or university degrees from outside of the United States and its territories must be from programs judged by the CSWE to be equivalent to a CSWE accredited program in the United States.

(c) Experience verification.

(1) Experience required for licensure or for specialty recognition must meet the requirements of §781.301 of this title (relating to Qualifications for Licensure). Required written documentation includes:

- (A) names and addresses of supervisors;
- (B) beginning and ending dates of supervision;
- (C) job description;
- (D) average number of hours of social work activity per week; and
- (E) evaluations from each supervisor.

(2) Written documentation of experience must include verification of the following:

- (A) administrative authority over the applicant's provision of social work services;
- (B) the applicant's compensation status for services; and

(C) the employment status as reflected in all advertising, informational material, and written policy.

(3) The board shall credit part-time experience on a prorated basis.

(4) Experience must have been in a position with primary responsibility for providing social work services, under the supervision of a qualified supervisor, and satisfactorily performed as indicated by written evaluations. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(5) The applicant must maintain and upon request, provide to the board documentation of employment status, pay vouchers, or supervisory evaluations.

(d) References. An applicant must list on the official application the names and addresses of three individuals familiar with the applicant's professional qualifications. The board may contact the references for verification of the applicant's qualifications and fitness.

(e) Jurisprudence examination. Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§781.307. Fitness of Applicants for Licensure.

(a) In determining the fitness of an applicant, the board shall consider all of the following:

- (1) the skills and abilities of an applicant to provide adequate social work services to clients;
- (2) the ethical behavior of an applicant in relationships with other professionals and clients; and
- (3) the applicant's worthiness of public trust and confidence.

(b) The board may consider a person, who has committed any act that would have been a violation of the Act or this chapter had the person been licensed at the time the act was committed, as unworthy of public trust and confidence.

(c) Surrender of a social work license within the previous five years while under investigation for professional

misconduct shall be considered evidence that the person is unworthy of public trust and confidence.

(d) Revocation of a social work license within the previous five years for professional misconduct shall be considered evidence that the person is unworthy of public trust and confidence.

(e) A surrender or revocation, which occurred more than five years before application, may also be considered in determining fitness.

§781.308. Materials Considered in Determination of Fitness of Applicants. In determining the fitness of applicants, the board shall consider the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) allegations of clients;

(5) transcripts or findings from official court, hearing, or investigative proceedings; and

(6) any other information which the board considers pertinent to determining the fitness of an applicant.

§781.309. Finding of Non-fitness.

(a) The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license, license renewal or recognition:

(1) lack of the necessary skills and abilities to provide adequate social work services;

(2) any misrepresentation in the application for licensure or license renewal or any other materials submitted to the board;

(3) the violation of any provision of the Act in effect at the time of application which is applicable to an unlicensed person; or

(4) the violation of any provision of the code of ethics or standards of practice which would have applied if the applicant had been a licensee at the time of the violation.

(b) The board may require an applicant for licensure or licensure renewal to obtain a criminal background check from an agency designated by the board and provide the board an official copy of that report. The board may consider the information on the report in determining the applicant's eligibility for licensure or licensure renewal. Failure to obtain the background check within 30 days of the request from the board is grounds for the denial of the application for licensure or licensure renewal.

§781.310. Provisional Licenses.

(a) The board may grant a provisional license as a social worker to a person who holds, at the time of application, a license or certificate as a social worker or social work associate issued by another state, the District of Columbia, or a territory of the United States that is acceptable to the board. An applicant for a provisional license must:

(1) submit a written request for a provisional license along with a completed application;

(2) be licensed in good standing as a social worker or social work associate in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act;

(3) have passed an equivalent examination accepted by another state, District of Columbia, or territory for licensure or certification as a social worker; and

(4) be sponsored by a person who holds a license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The provisional licensee shall use the appropriate licensing title or initials followed by the word "provisional".

(d) The provisional license shall be issued for the same category or level of license or certificate as the applicant held in the other state, District of Columbia, or territory of the United States.

(e) The board must complete the processing of a provisional licensee's application for a regular license not later

than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must file all evidence of his or her academic and experience requirements within this time period. The board office shall evaluate the information received and may issue a deficiency letter during this period. If the documentation received during this period does not show that the person meets the education and experience requirements set out in this chapter, the application shall be proposed for denial.

(f) A provisional license is valid until the date the board issues a license or denies the provisional licensee's application for a license.

(g) The board shall issue a regular license to the holder of a provisional license if:

(1) the provisional licensee passes the examination required by §505.354 of the Act; and

(2) the board verifies that the provisional licensee has the education and experience requirements for a regular license.

(h) The board shall consider only states, the District of Columbia, and territories of the United States as acceptable for the purposes of licensure by endorsement.

§781.311. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a social worker as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

(1) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(2) The temporary license is valid until the results of the first qualifying examination are made available (i.e., the first examination taken by the temporary licensee or the end of the six months from issuance of the license if the examination is not taken, whichever is earlier).

(3) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.

(4) Should the applicant take and fail the exam, the temporary license is no longer valid. The applicant must cease and desist from the use of the temporary license and title immediately.

(5) Should the applicant pass the exam the board will issue the license or specialty recognition in accordance with §781.305(g) of this title (relating to Application For Licensure).

(b) A person who failed the examination and is without a valid temporary license may retake the examination under §781.312 of this title (relating to Examination Requirement).

(c) A temporary license will not be granted to an applicant who has held a temporary license for the same license category within the previous five years.

(d) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.

(e) Applicants requesting a temporary license must submit the application form and temporary fee required by the board.

§781.312. Examination Requirement.

(a) An applicant for licensure or recognition must pass an examination designated by the board.

(b) If an applicant fails the first examination, the individual may retake the examination no more than two additional times. An applicant who has failed the examination three times must request in writing to the board to retake the examination a fourth time. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination. The applicant must submit the form and pay the petition for re-examination fee required by the board prior to each additional exam administration.

(c) An applicant who fails the exam must wait the required timeframe between exam administrations. The board or executive director may waive the waiting period if petition in writing providing justification of the waiver in accordance with board policy.

(d) If an applicant fails the examination on the fourth attempt, the person's application will be voided and reapplication may be required. The applicant will not be

permitted to reapply for licensure for a period of not less than one year.

(e) The board may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

§781.313. Alternate Method of Examining Competency (AMEC) Program.

(a) An applicant who has taken an examination within the previous 12 months and who has failed the examination on two or more occasions by no more than five points may submit a written petition to the board for a probated license as a LBSW, or LMSW. The last examination must be within the past 12 months. The applicant must complete the application for participation, pay the administrative fee and submit the memorandum of understanding and the findings of facts documentation to the board for consideration.

(b) The board will consider the interest of the public in its review of the petition and will issue its decision in writing within 90 days of receiving all required materials from the applicant.

(c) The written decision will include the following:

(1) a statement of the reason(s) the petition for a probated license is denied; or

(2) the terms of participation under which the license is granted.

(d) The participant must complete the professional portfolio, quarterly reports and other requirements within the required timeframe as mandated by the board.

(e) The AMEC program must be completed in no less than 12 consecutive calendar months and no more than 24 consecutive calendars months from the date of agreed order issued by the board unless prior approval is received from the board or its designee.

(f) An AMEC participant must remain under the supervision of a board approved supervisor until the board has reviewed the required documents submitted and issued a final order regarding the issuance of a regular license by the board. Continued reports from the supervisor may be required at the discretion of the board or its designee.

(g) The board may grant a regular license to an applicant who successfully completes the terms of participation to the satisfaction of the board.

§781.314. Issuance of License Certificates.

(a) The board issues license certificates indicating the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will indicate the date that the license expires, unless it is renewed. The board shall have a method to indicate the new expiration date of a license which has been renewed. The license certificate will also include any specialty recognition or supervisory status, if applicable.

(b) The license title or its initials must be included in all professional uses of the licensee's name as required by the Act, §505.351.

(c) A licensee shall display the license issued by the board in a prominent place in all locations of practice.

(d) A copy of the Code of Conduct listed in §781.401 of this title (relating to Code of Conduct) is issued with the license. The copy of the Code of Conduct also includes information regarding the client complaint process. The copy of the Code of Conduct must be displayed in all locations of practice.

(e) The board will make available its client information brochure on the board's Internet website. The board may provide copies to each licensee approved for independent practice. The licensee shall make these brochures available to all clients.

(f) A licensee who offers social work services on the Internet must include a statement that the licensee is licensed by the State of Texas and provide a copy of the code of ethics with the information on how to contact this board by mail or telephone.

(g) Upon request of the client, a licensee shall provide information regarding their license category and how to contact the board.

§781.315. Application Denial.

(a) The board shall deny an application if all of the requirements for licensure or recognition are not met. An applicant shall be notified when the license or recognition is proposed for denial.

(b) A person whose application for licensure or recognition is denied is entitled to a formal hearing as set out in Subchapter G of this chapter (relating to Formal Hearings).

§781.316. Required Reports to the Board.

(a) A licensee shall make written reports to the board office within 30 days of the following:

(1) a change of mailing address, place of employment or business or home phone number;

(2) an arrest or conviction of the licensee;

(3) the filing of a criminal case against the licensee;

(4) a criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee;

(5) the settlement of or judgment rendered in a civil lawsuit filed against the licensee and relating to the licensee's professional social work practice; or

(6) complaints against, investigations involving or actions against the licensee done by a licensing or certification body related to health or mental health services when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the board to determine whether a licensee remains fit to hold a license.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the board.

§781.317. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at anytime voluntarily offer to surrender his or her license for any reason, without compulsion.

(2) The license may be delivered to the board office by hand or mail. The licensee must cease practice as a social worker pending action from the board on the surrender of the licensee's license.

(3) If there is no complaint pending, the board office may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee has offered the surrender of his or her license after a complaint has been filed, the board shall consider whether to accept the surrender of the license.

(2) When the board has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the surrender.

(3) In order to accept a surrender, the board may require the licensee to agree to certain findings of fact and conclusions of law, including the making of an admission of a violation of the Act or this chapter.

(4) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Reinstatement. A license, which has been surrendered by the licensee and accepted by the board, may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

§781.318. Issuance of Licenses to Certain Out-Of-State Applicants.

(a) Notwithstanding any other licensing requirement of this chapter or the Act:

(1) the board may not require an applicant who is licensed in good standing in another state to pass a licensing examination conducted by the board under the Act if an applicant with substantially equivalent experience who resides in this state would not be required to take the licensing examination; and

(2) the board may issue a license to an applicant who is currently licensed in another state to independently practice social work if:

(A) after an assessment, the board determines that the applicant:

(i) demonstrates sufficient experience and competence;

(ii) has passed the jurisprudence examination conducted by the board under Occupations Code, §505.3545; and

(iii) at the time of the application, is in good standing with the regulatory agency of the state in which the applicant is licensed; and

(B) the applicant presents to the board credentials that the applicant obtained from a national accreditation organization and the board determines that the requirements to obtain the credentials are sufficient to minimize any risk to public safety.

(b) When assessing the experience and competence of an applicant for the purposes of this section, the board may take into consideration any supervision received by the applicant in another state or jurisdiction if the board determines that the supervision would be taken into consideration for the purpose of licensing or certification in the state or jurisdiction in which the applicant received the supervision.

Subchapter D. Code of Conduct and Professional Standards of Practice.

§781.401. Code of Conduct.

(a) A social worker must observe and comply with the code of conduct and standards of practice set forth in this Subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to do or refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report or present her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall be responsible for setting and maintaining professional boundaries.

(9) A social worker shall not have sexual contact with a client or a person who has been a client.

(10) A social worker shall refrain from providing service while impaired due to the social worker's physical or mental health or the use of medication, drugs or alcohol.

(11) A social worker shall not exploit his or her position of trust with a client or former client.

(12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(13) A social worker shall refer a client for those services that the social worker is unable to meet and terminate service to a client when continued service is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of conduct or standards of practice in effect at the time of the violation.

§781.402. The Practice of Professional Social Work.

(a) Practice of Baccalaureate Social Work--The application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is basic generalist practice that includes interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling,

supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(b) Practice of Clinical Social Work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. The practice of Clinical Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice and Master's Social Work Practice. Treatment methods include the provision of individual, marital, couple, family, and group therapy mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities. The practice of Clinical Social Work may include independent clinical practice and the provision of clinical supervision.

(c) Practice of Master's Social Work--is the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. The Practice of Master's Social Work may include the Practice of Clinical Social Work under clinical supervision. The practice of Master's Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice.

(d) Independent Non-Clinical Practice --The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(e) Independent Clinical Practice--The provision of clinical social work in independent practice wherein the in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

§781.403. General Standards of Practice. The scope of this section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes,

(1) Shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(2) Shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. When professional services are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(3) Shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(4) May not persistently or flagrantly over treat a client.

(5) Shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act.

(6) Shall not participate in any way in the falsification of applications for licensure. Nor shall an applicant for licensure participate in any way in the falsification of applications for licensure.

(7) Shall ensure that the individual has been informed of the following before or at the time of the individual's initial appointment with the licensee:

(A) qualifications of the provider and any intent to delegate service provision;

(B) any restrictions placed on the license by the board;

(C) the limits on confidentiality and privacy; and

(D) fees and arrangements for payment.

(8) Shall ensure that the individual has been informed of any changes to the items in paragraph (7) of this subsection prior to initiating the change.

(9) If bartering for services, has the responsibility to assure that the market value of the barter does not exceed the customary charge for the service.

§781.404. Relationships with Clients.

(a) A social worker shall make known to a prospective client the important aspects of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, fees and arrangements for payment that might affect the client's decision to enter into the relationship.

(b) No commission or rebate or any other form of remuneration shall be given or received by a social worker for the referral of clients for professional services.

(c) A social worker shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of five years for an adult client and five years beyond the age of 18 years of age for a minor, or in compliance with applicable laws or professional standards.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A social worker shall terminate services when in the licensee's professional opinion the client either has met the service goals or is not benefiting from those services. When services to the client are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or sources.

(i) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or

(3) the practice or field of social work.

(j) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the services of an organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(k) If the licensee learns that any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the services, qualifications or products have been made, the licensee shall take all available steps to correct the inappropriate claims and to prevent their reoccurrence. As appropriate, the licensee may notify the board in writing about these claims.

(l) A licensee shall provide social work intervention only in the context of a professional relationship.

(m) Telepractice may be used as part of the social work process. Social workers engaging in Telepractice must adhere to each provision of this chapter as well as those in the jurisdictions where the services take place.

(n) The licensee shall not provide social work to previous or current:

(1) family members;

(2) personal friends;

(3) educational associates;

(4) business associates; or

(5) individuals whose welfare might be jeopardized by a dual relationship.

(o) The licensee shall follow agency policy related to accepting from or giving gifts to clients or relatives of clients. If no agency policy exists, no gift with a value in excess of \$25 may be accepted or given.

(p) The licensee may not borrow or lend money or items of value to clients or relatives of clients.

(q) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(r) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(s) A licensee shall set and maintain professional boundaries. Dual relationships with clients should be avoided. It is the responsibility of the social worker to ensure the safety of the client if a dual relationship arises.

§781.405. Sexual Misconduct.

(a) For the purpose of this section, the following terms shall have the following meanings.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01.

(2) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation or exploitative behavior by, the licensee is consistent with, or a part of, a client's or former client's social work services.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a person who is:

(1) a client or former client;

(2) being supervised by the licensee; or

(3) a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a person who is a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the client;

(2) outside the appointments with the client;

or

(3) off the premises used by the licensee for the appointments with the client.

(f) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01.

(g) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection need contain only the information necessary to:

(A) identify the licensee;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

(h) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person who is or has been a recipient of professional services from the licensee for the purpose of engaging in the practice of baccalaureate, clinical or master's social work services in an agency or independent practice setting:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature and;

(A) is not bound in the therapeutic modality for the purpose of the professional services rendered;

(B) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(C) is sufficiently severe or intense to be abusive to a reasonable person in the context.

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies, but of a sexual nature;

(11) any bodily exposure of genitals, anus or breasts;

(12) encouraging another to masturbate in the presence of the licensee; or

(13) masturbation by the licensee when another is present.

§781.406. Professional Representation.

(a) A social worker shall not misrepresent any professional qualifications or associations.

(b) A social worker shall not misrepresent any agency or organization by presenting it as having attributes, which it does not possess.

(c) A social worker shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the efficacy of any services.

(d) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the social worker.

§781.407. Testing.

(a) A social worker shall make known to clients the purposes and explicit use to be made of any testing done as part of a professional relationship.

(b) A social worker shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A social worker shall not administer any test without the appropriate training and experience to administer the test.

(d) A social worker must observe the necessary precautions to maintain the security of any test administered by the social worker or under the social worker's supervision.

§781.408. Drug and Alcohol Use. A licensee shall not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to practice social work;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

§781.409. Client Records and Record Keeping. Following applicable statutes, the licensee shall:

(1) keep accurate and legible records of the dates of services, types of services, progress or case notes, intake assessment, treatment plan, and billing information;

(2) retain and dispose of client records in such a way that confidentiality is maintained;

(3) in independent practice, establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services;

(4) keep client records for five years for adult clients and five years beyond the age of 18 for minor clients;

(5) at the request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client (this requirement applies even if the charges are to be paid by a third party);

(6) comply with the requirements of Texas Health and Safety Code, Chapters 161 and 611; Texas Family Code, Chapter 261; and other applicable state law concerning confidentiality of protected health information and the release of mental health records; and

(7) be responsible for services rendered when providing approval by signature for services rendered by another individual who may or may not be licensed.

§781.410. Billing and Financial Relationships.

(a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional.

(b) In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage.

(c) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(d) A licensee shall bill clients and/or third parties for only those services actually rendered by the licensee.

(e) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(f) A licensee may not knowingly or flagrantly overcharge a client.

(g) A licensee may not submit to a client and/or a third payor a bill for services that the licensee knows were not provided or knows were improper, unreasonable or unnecessary, with the exception of a missed appointment.

§781.411. Client Confidentiality.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including court room rules of evidence, where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other state or federal statutes or rules, as applicable.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.

(d) A licensee shall have written permission for release of information for clients. The written release should include:

- (1) name and identifying information of the client;
- (2) the purpose of the release of information;
- (3) whom the information is being released to;
- (4) duration the release is intended to be enforced; and
- (5) the signature of the client or guardian representative.

(e) The written release of information should be maintained in the permanent client record and should be reviewed and update regularly.

(f) A licensee shall report information if required by any of the following statutes:

- (1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;
- (2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;
- (3) Texas Health and Safety Code, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and
- (4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(g) A social worker shall follow the rules of confidentiality set forth in the Health and Safety Code, Chapter 611, and other applicable laws.

(h) A licensee may take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client in accordance with the Texas Health and Safety Code, Chapter 611.

§781.412. Licensees and the Board.

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the board's executive director.

(c) The licensee shall report any and all name changes, address changes, or employment setting changes to the board within 30 days.

(d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(e) The board may ask any applicant for licensure as a social worker, whose file contains negative references of good moral character, to come before the board for an interview before the licensure process may proceed.

(f) The board may consider the failure of a social worker to respond to a request from the board or executive director for information or other correspondence as unprofessional conduct and grounds for disciplinary proceedings in accordance with this chapter.

§781.413. Assumed Names.

(a) An independent clinical practice or an independent non-clinical practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.

(b) When an assumed name is used in any practice of social work, the name of the social worker must be listed in conjunction with the assumed name. An assumed name used by a social worker must not be false, deceptive, or misleading.

§781.414. Consumer Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter:

- (1) on each registration form;
- (2) on each application;
- (3) on a written contract for services;
- (4) on a sign prominently displayed in each place of business; or
- (5) in a bill for services provided.

(b) The board shall make consumer information available to the public.

§781.415. Display of License Certificate.

(a) A social worker shall display the license certificate, issued by the board, in a prominent place at each location of practice.

(b) A social worker shall display only an original of the license certificate issued by the board.

(c) A social worker shall not make any alteration on a license certificate issued by the board.

(d) A social worker shall not display a license certificate issued by the board, which has been reproduced or is expired, suspended, or revoked.

(e) A licensee who elects to copy or allow to be copied a license certificate issued by the board takes full responsibility for the use or misuse of the reproduced license.

§781.416. Advertising and Announcements.

(a) Information used by a social worker in any advertisement or announcement of services shall not contain information which is deceptive, inaccurate, incomplete, or out of context.

(b) The board imposes no restrictions on the advertising medium a social worker uses, including personal appearances, use of personal voice, size or duration of the advertisement or use of a trade name.

(c) All advertisements or announcements of professional services which a licensee offers, including telephone directory listings, shall clearly state the social worker's licensure designation.

(d) A social worker shall not include in advertising or announcements any information or any reference to certification in a field outside of social work or membership in any organization, if that information might confuse or mislead the public as to the services or legal recognition of the social worker.

(e) Information used by a licensee in any advertisement or announcement shall not contain information, which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(f) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

§781.417. Research and Publications.

(a) In research with a human subject, a social worker is responsible for the subject's welfare throughout a project, shall obtain informed consent and take reasonable precautions so that the subject shall suffer no injurious emotional, physical or social effect.

(b) A social worker shall disguise data obtained from a professional relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a social worker must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A social worker must give due credit through joint authorship, acknowledgment, footnote statements, Internet sources or other appropriate means to those who have contributed significantly to the social worker's research or publication.

§781.418. Provision of Court Ordered Home Studies, Adoption Studies or Custody Evaluations.

(a) The role of social worker is to assist the parties, their children and the court by maintaining a posture that is both critical and impartial.

(b) Social workers performing such evaluations are required to provide written reports to the parties and the court and to testify under oath as to the factual issues and expert opinions. The social worker should maintain a copy of the report for his/her records in accordance with client records retention as required by §781.409(4) of this title (relating to Client Records and Record Keeping).

(c) Social workers should not use or review previous custody evaluations or home studies in making a recommendation unless instructed to do so by the court or by consent of all parties requesting the evaluation.

(d) The social worker should not perform an evaluation of a child or family in a case where the social worker has previously served or is currently serving in another professional role which may compromise the social worker's objectivity.

(e) Social workers performing evaluations for the Department of Family and Protective Services (DFPS) must meet the criteria established by that agency's Independent Pre-Adoptive Home Screening and Post-Placement Adoptive Report Rules at 40 Texas Administrative Code, Part 19, Chapter 745.

Subchapter E. License Renewal and Continuing Education.

§781.501. General.

(a) A license must be renewed biennially.

(b) A person who holds a license must have fulfilled any continuing education requirements prescribed by this chapter in order to renew a license.

(c) Each person who holds a license is responsible for renewing the license and shall not be excused from paying penalty fees for late renewal. Failure to receive notice from the board does not waive payment of penalty fees.

(d) The board may deny the renewal of the license of a licensee who is in violation of the Act, or this chapter, at the time of application for renewal.

(e) A person whose license has expired shall not use the terms or titles described in the Act, §505.351. The person shall return his or her license to the board.

(f) The deadlines established for renewals, late renewals, and penalty fees are based on the postmarked date of the documentation submitted by the licensee.

(g) The board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

(h) The board upon receipt of a final court or attorney general's order will suspend a license due to failure to pay child support per the Family Code, Chapter 232. The individual must pay the reinstatement fee set out in §781.217 of this title (relating to Fees).

(i) A license must be renewed and in good standing prior to the licensee obtaining a different category of licensure.

§781.502. Staggered Renewals. The board shall use a staggered system for license renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) License fees will be prorated if the licensee's initial renewal date, as determined by the board, occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

§781.503. License Renewal.

(a) At least 45 days prior to the expiration of a license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and penalty fees, and continuing competency activities needed to complete the renewal requirements.

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses; telephone numbers; continuing education completed; a signed statement regarding any civil lawsuits, criminal cases and convictions or any complaints against, investigations involving, or actions against the licensee by any licensing or certification body; and a statement of continuing compliance with the Act and this chapter.

(c) The executive director will respond in writing to the application for renewal within 15 working days of initial receipt and of receipt of a completed application (if the initial application is deficient) notifying the applicant that his or her license is renewed, that the application is deficient, or that renewal is proposed for denial. Failure to process a renewal application in the time periods stated shall be governed by §781.305(h) and (i) of this title (relating to Application for Licensure).

(d) The board shall renew the license of a social worker whom has met all requirements for renewal including payment of all fees and submission of documentation of completion of all required continuing education.

(e) If a licensee has made timely and sufficient application for renewal, the license does not expire until the board has acted on the renewal. If the licensee claims to have made timely and sufficient application and is otherwise eligible for license renewal, his or her license will be considered to be current until the renewal is issued or until the board office receives the information that timely and sufficient application was not made.

(f) A licensee who has been recommended for disciplinary action must file a timely and complete application for license renewal. If the licensee fails to pay all fees or to document completion of required continuing education he or she must cease all social work practice until all requirements for license renewal are complete.

(g) The board may deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §781.602(c) of this title (relating to Disciplinary Action and Notices) is mailed by the board.

(h) A license that is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(i) In the case of delay in the license renewal process because of formal disciplinary action, penalty fees shall not apply.

(j) If a complaint against a licensee is in process on the date that his or her license renewal is due:

(1) a notice will be sent to the licensee, certified mail return receipt requested to the mailing address

on file with the board, requiring the licensee to renew his or her license or return his or her license to the board;

(2) the notice will state that the complaint process will continue until its final resolution or if the license is renewed; and

(3) unless the return receipt is received by the board, receipt of the notice will be presumed to have occurred as provided in §781.602 of this title.

(k) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(l) For all licenses renewed between January 1, 2007 and December 31, 2008, the jurisprudence training course must be completed each renewal period in order to renew the license. Completion of the jurisprudence training course shall count as three hours of the continuing education requirement for professional ethics and social work values, as referenced in §781.508(b) of this title (relating to Hour Requirements for Continuing Education).

§781.504. Late Renewal.

(a) A person who fails to meet all the requirements to renew his or her license by the renewal date ceases to be licensed.

(b) A person who renews a license after the expiration date but on or before 90 days after the expiration date shall pay the renewal fee and appropriate penalty fees.

(c) If a person has not renewed a license for more than 30 days after the date of expiration, the board shall inform the person of the expiration date of the license and the amount of the fee required for renewal.

(d) The board shall notify a person whose license is expired that the person may not practice social work or otherwise violate the Act.

(e) A person whose license was not renewed on or before 90 days from the expiration date may renew within one year of the expiration date by paying the appropriate renewal and penalty fees.

(f) If a person did not have the required continuing education at the time of expiration of the license, the person

shall file evidence of completion of the required continuing education before the license can be renewed.

(g) The continuing education may have been earned during the continuing education period or within the one-year period following expiration.

(h) The evidence of continuing education shall be the completed continuing education form and other documentation required by the board.

(i) On or after one year from the expiration date, a person may no longer renew the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for the license including passing the licensure examination.

§781.505. Inactive Status.

(a) A licensee whose license has not lapsed, but who is not employed to provide social work services in Texas, is eligible for inactive status. The request for inactive status may be made to the board at any time prior to the lapse of the license.

(b) No continuing education is required of a licensee while on inactive status.

(c) The inactive status fee and any applicable renewal fee and penalty fee for late renewal must be paid prior to the date the license lapses.

(d) A person must notify the board in writing to reactivate the person's status. Reactivation status shall begin on the first day of the month following payment of the license fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).

§781.506. Emeritus Status.

(a) A licensee who is at least 55 years of age, or disabled, and who is not engaged in professional social work practice, is eligible for an emeritus license. The request for emeritus status must be submitted in writing to the board.

(b) On receipt of the request the board will issue an emeritus license that will remain valid for the lifetime of the licensee. No renewal fee or continuing education will be required.

(c) The emeritus licensee may only use his or her emeritus title in the provision of social work services as a volunteer. The emeritus social worker may not receive any compensation for social work services.

(d) An emeritus license can be reinstated to an active license without being subject to the additional penalty for late renewal of a license. To be eligible for a new license, the person would be required to submit an updated application and the application and license fee. Submission of verification of education, supervision, and examination score is not required.

§781.507. Active Military Duty.

(a) A licensee on active duty with the Armed Forces of the United States who is not practicing in the State of Texas at the time of renewal is exempt from the renewal requirement and may, within one year of his or her return to Texas or release from active duty, whichever occurs first, request reinstatement of his or her license.

(b) The board will issue a license on receipt of the request for reinstatement, documentation of his or her active duty status at the time the license expired, and the fee for the current license. No continuing education will be required prior to reinstatement and no penalty fees will be charged.

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete a total of 30 clock-hours of continuing education biennially obtained from board approved continuing education providers.

(b) As part of the required 30 clock-hours, a licensee must complete a minimum of six clock-hours of continuing education in professional ethics and social work values during the biennial renewal period.

(c) A clock-hour is defined as 60 minutes of standard time.

(d) A licensee may earn credit for ethics as a presenter or a participant.

(e) On petition by a licensee, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee an additional period of time in which to complete all continuing education requirements. In all cases, the decision of the executive director may be appealed to the board. Should the board overturn the decision of the executive director, the board may elect to waive the late fees accrued or determine

that the late fees should be paid by the licensee. Should the decision of the executive director be upheld by the board and the licensee be denied in the appeal, all late fees accrued will apply.

§781.509. Types of Acceptable Continuing Education.

Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

(1) participating in institutes, seminars, workshops, conferences, independent study programs, post graduate training programs, college academic or continuing education courses which are related to or enhance the practice of social work and are offered or sponsored by a board approved provider;

(2) teaching or presenting the activities described in paragraph (1) of this section;

(3) writing a published work or making a presentation directed toward or applicable to the profession of social work;

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE; or

(5) providing supervision to a social worker participating in the program in accordance with §781.313 of this title (relating to the Alternative Method of Examining Competency (AMEC) Program); or

(6) completion of the board's jurisprudence training course no more than once per renewal period, unless the board directs otherwise.

§781.510. Activities Unacceptable as Continuing Education. The board will not give credit hours for:

(1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in service programs which are required as a part of one's job unless the in service training is a type of acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education);

(4) college academic courses which are audited or not taken for credit; or

(5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

§781.511. Requirements for Continuing Education Providers.

(a) A provider must be approved under this section to offer continuing education programs.

(b) A person seeking approval as a continuing education provider shall file an application on board forms and include the continuing education provider application fee. Governmental agencies shall be exempt from paying this fee.

(c) Entities that receive automatic status without application or fee as approved providers are:

(1) accredited colleges and universities;

(2) a national or statewide association, board or organization representing members of the social work profession;

(3) nationally accredited health or mental health facilities; or

(4) a person or agency approved by any state or national organization in a related field such as medicine, psychiatry, psychology, sociology, marriage and family therapy, and similar field of human service practice.

(d) The applicant shall certify on the application that:

(1) all programs offered by the provider for credit hours from the board will comply with the criteria in this section; and

(2) the provider will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (k) of this section.

(e) A program offered by a provider for credit hours from the board shall:

(1) contribute to the advancement, extension and enhancement of the professional skills and knowledge of the licensee in the practice of social work;

(2) be developed and presented by persons who are appropriately knowledgeable in the subject matter of the program and training techniques;

(3) specify the course objectives, course content and teaching methods to be used;

(4) specify the number of credit hours; and

(5) specify the number of credit hours in ethics and values separately and as part of the total hours credited.

(f) The provider must document each program's compliance with this section and maintain that documentation for a period of three years.

(g) Department staff shall review the continuing education provider application and notify the applicant of any deficiencies or grant approval and indicate the continuing education provider approval number to be noted on all certificates of attendance.

(h) Each continuing education program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the provider by mail. The provider and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The provider shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) The provider, as part of the renewal process or upon request will provide a listing of subcontractors utilized.

(j) To maintain approval as a provider, each provider shall submit to the board annually an application for renewal of the approved provider status and an application fee if applicable.

(k) It shall be the responsibility of a provider to provide each participant in a program with a legible certificate of attendance following the completion of a course. The certificate of attendance shall contain:

(1) the name of the provider and approval number;

(2) the name of the participant;

(3) the title of the program;

(4) the number of credit hours given, including ethics hours credited;

(5) the date and place of the program;

(6) the signature of the provider or its representative; and

(7) board contact information.

(l) The provider shall maintain attendance records for a period of three years.

(m) The provider shall be responsible for assuring that no licensee receives continuing education credit for time not actually spent attending the program.

(n) Upon the failure of a provider to comply with any of the requirements of this section, the board, after notice to the provider and a due process hearing, may revoke the provider's approval status.

(o) The board may evaluate any provider or applicant at any time to ensure compliance with requirements of this section.

(p) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director.

§781.512. Evaluation of Continuing Education Providers.

(a) The board may evaluate any approved provider or applicant at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved continuing education providers on a regular basis and shall report the audit results to the board. During the audit, staff shall request documentation from the continuing education provider regarding compliance with §781.511 of this title (relating to Requirements for Continuing Education Providers).

(c) Department staff shall notify a continuing education provider of the results of an audit. If the continuing education provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) The board shall review the approval status of continuing education providers that are not in compliance and that have not taken corrective action.

(e) The board may rescind the approval status of a continuing education provider.

(f) Complaints regarding continuing education programs offered by approved continuing education providers may be submitted in writing to the executive director. Complaints may result in an audit of a continuing education provider and may be referred to the appropriate committee of the board for appropriate action.

(g) A provider whose approval status has been rescinded by the board may reapply for approval on or after the 91st day following the board action. The provider must provide documentation that corrective action has been taken and that the provider's programs will be presented in compliance with §781.511 of this title. An appropriate committee of the board shall review reapplication by a formerly denied continuing education provider.

(h) Continuing education hours received from a provider whose approval has been rescinded or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use of renewal of the social worker license.

(i) Continuing education hours received from providers who failed to meet the renewal requirements of the board shall not be acceptable for use in the renewal of the social worker's license.

(j) Fees paid by a provider whose approval has been rescinded or denied are non-refundable.

§781.513. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A licensee may request in writing that the board consider approval of continuing education hours provided by a non-approved provider. The licensee shall submit documentation as specified in §781.511(e) of this title (relating to Requirements for Continuing Education Providers) for the board to review and a fee equal to the continuing education provider application fee.

(b) The executive director will review the documentation and notify the licensee in writing whether the program(s) are acceptable as credit hours. In all cases, the

decision of the executive director may be appealed to the board.

§781.514. Credit Hours Granted. The board will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour will be given for each hour of participation in a continuing education program by an approved provider.

(2) Credit may be earned, post-licensure, through successfully completing postgraduate training programs (e.g., intern, residency, or fellowship programs) or successfully completing social work related courses which are part of the curriculum of a graduate school of social work at a rate of five credit hours per each semester hour or its equivalent not to exceed 10 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title (relating to Hour Requirements for Continuing Education) only through a course specifically designated as an ethics course.

(3) Credit may be earned for teaching social work courses in an accredited college or university. Credit will be applied at the rate of five credit hours for every course taught, not to exceed 15 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a) of this title only through teaching a course specifically designated as an ethics course.

(4) A field instructor for a social work intern will be granted five credit hours for each college semester completed, not to exceed 20 credit hours per renewal period.

(5) A presenter of a continuing education program or an author of a published work, which imparts social work knowledge and skills, may be granted five credit hours for each original or substantially revised presentation or publication, not to exceed 20 credit hours per renewal period.

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. With the exception of persons residing outside the United States, a maximum of 20 credit hours for independent study programs will be accepted per renewal period.

(7) A licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements. Continuing education earned during the licensee's birth month may be used for the current renewal or for the following year.

(8) For all licenses renewed between January 1, 2007, and December 31, 2008, the jurisprudence training course must be completed in order to renew the license. Completion of the jurisprudence training course shall count as three hours of the continuing education requirement in professional ethics and social work values, as referenced in §781.508(b) of this title.

§781.515. Continuing Education Documentation.

(a) Credit hours must be listed on the license renewal form supplied by the board. Failure to submit the form or failure to complete the required continuing education is grounds for denial of the application for license renewal.

(b) A random sample of renewal applications will be selected for review.

(c) Documentation of continuing education listed on the renewal form must be retained for three years.

(d) A licensee who is selected for review will be notified by mail and required to submit acceptable documentation of the continuing education listed on the continuing education report form. Acceptable documentation includes the following:

(1) copies of continuing education certificates of attendance or other form of verification from the provider of the continuing education program;

(2) grade reports or transcripts verifying the completion of a college course;

(3) letters from the dean or department head or his or her authorized representative verifying the teaching or field instructor assignment;

(4) letters from the program sponsor verifying participation as a presenter in a continuing education program or a copy of the program; or

(5) copies of continuing education programs and other documentation as necessary to establish the relevance of its content to social work practice for any continuing education program which does not have an approved provider number.

(e) All forms of verification must include the subject, date(s), credit hours given and name of the sponsor, board

issued sponsor approval number or other identifying sponsor information and board contact information (if applicable).

§781.516. Requirements of Supervisor Training Course Providers

(a) A supervisor training course provider must be an approved continuing education provider or exempt under §781.511 of this title (relating to Requirements for Continuing Education Providers) to apply for approval as a supervisor training course provider.

(b) A supervisor training course provider must be approved under this section to offer supervisor training courses.

(c) A provider seeking approval as a supervisor training course provider shall file an application on board forms. The board shall maintain a list of supervisor training course providers and make the list available to licensees on the board's web site.

(d) The applicant shall certify on the application that:

(1) all supervisor training courses offered by the supervisor training course provider for credit from the board will comply with the criteria in this section; and

(2) the supervisor training course provider will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (j) of this section.

(e) A supervisor training course offered for credit from the board shall:

(1) provide the recipient of the training with the professional skills and knowledge necessary to for the recipient to fulfill the supervision duties expected by the board in supervisory roles authorized by the board;

(2) be developed and presented by persons who are appropriately knowledgeable in the subject matter of the program and training techniques; and

(3) specify the course objectives, course content, and teaching methods to be used.

(f) The supervisor training course provider must document each course's compliance with subsection (d) of this section and maintain that documentation for a period of three years.

(g) The board will review the supervisor training course provider application, notify the applicant of any deficiencies or grant approval, and indicate the supervisor training course provider approval number to be noted on all certificates of attendance. In order to be approved, an applicant must demonstrate compliance with the board's course content guidelines.

(h) Each supervisor training course shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the supervisor training course provider by mail. The supervisor training course provider and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The supervisor training course provider shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) A supervisor training course provider maintains approval by the board until the provider elects to be removed as an approved provider, as long as the provider has maintained status as a continuing education provider, or is exempt, and as long as the provider's approval status has not been rescinded by the board.

(j) It shall be the responsibility of a supervisor training course provider to provide each participant in a program with a legible certificate of attendance following the completion of the course. The certificate of attendance shall contain:

(1) the name of the supervisor training course provider and approval number;

(2) the name of the participant;

(3) the title of the program;

(4) the date and place of the program;

(5) the signature of the supervisor training course provider or its representative; and

(6) board contact information.

(k) The supervisor training course provider shall maintain attendance records for not less than three years.

(l) The supervisor training course provider shall be responsible for assuring that no licensee receives credit unless

the participant actually attended the program and demonstrated competency in the training objectives.

§781.517. Evaluation of Supervisor Training Course Providers

(a) The board may evaluate any approved supervisor training provider at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved supervisor training courses on a regular basis and shall report the audit results to a board committee. During the audit, staff shall request documentation from the supervisor training provider regarding compliance with §781.516 of this title (relating to Requirements of Supervisor Training Course Providers).

(c) Department staff shall notify supervisor training providers of the results of the audit. If the supervisor training provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) The board shall review the approval status of supervisor training providers that are not in compliance and that have not taken corrective action.

(e) The board may rescind the approval status of a supervisor training provider.

(f) Complaints regarding supervisor training courses offered by approved supervisor training providers may be submitted in writing to the executive director. Complaints may result in an audit of a supervisor training course provider and may be referred to the board for appropriate action.

(g) A supervisor training course provider whose approval status has been rescinded by the board may reapply on or after the 91st day following the board action. The provider must provide documentation that the corrective action has been taken and that the provider's courses will be presented in compliance with §781.516 of this title.

(h) Supervisory Training received from a provider whose approval status has been rescinded or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use toward the requirements of §781.304 of this title (relating to Recognition as a Board Approved Supervisor and Supervision Process).

(i) Supervisory training received from a provider shall not be acceptable toward the requirements of §781.304 of this title if the provider has not maintained approval status with the board.

Subchapter F. Complaints and Violations.

§781.601. Purpose.

The purpose of this Subchapter is to set out grounds for denial of an application or discipline of a licensee and the procedures for reporting alleged violations of the Act or this chapter.

§781.602. Disciplinary Action and Notices.

(a) The board shall revoke, suspend, suspend on an emergency basis, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons:

(1) violation of any provision of the Act;

(2) violation of any rule adopted by the board;

(3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;

(4) physical or mental incompetency to perform social work services as determined by the board;

(5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board;

(6) any of the grounds described in the Act, §505.021(a); or

(7) violation of law or rules of another health or mental health profession resulting in disciplinary action by the regulatory body of that profession.

(b) Prior to institution of formal disciplinary proceedings against a licensee, the board shall give written notice to the licensee by certified mail, return receipt requested or registered mail. The notice of violation letter will include the facts or conduct alleged to warrant revocation, suspension, or reprimand and the severity level from the sanction guide. The licensee shall be given the opportunity, as described in the

notice, to show compliance with all requirements of the Act and this chapter.

(c) The licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, probated, or reprimanded.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.

(e) The licensee will be considered to have received notice of board disciplinary action if the notice is mailed to the last address provided in writing to the board by the licensee.

(f) If a notice is mailed to the last known address of the licensee, and the licensee fails to respond to the notice within 10 days from receipt of the notice, the licensee will be considered to have waived his or her right to a hearing in the matter.

(g) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of social work, the board after notice and opportunity for a hearing, as described in this section, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the board.

§781.603. Complaint Procedures.

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint an ethics committee to work with the executive director.

(c) The board office shall not accept a complaint if the official form is not filed within five years of the date of termination of the professional-client relationship which gave rise to the alleged violations or five years from the date the

complainant learned the behavior of the social worker was a violation of the rules and/or law. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints.

(d) The board may waive the time limitation in cases of egregious acts or continuing threats to public health or safety when presented with specific evidence that warrants such action.

(e) On receipt of a complaint, the executive director shall send an acknowledgment letter. If the complaint is not in the form of a sworn statement, a copy of applicable rules, and an official form will be included with the letter of acknowledgment and further action on the complaint may, at the discretion of the executive director, be delayed until a sworn statement is received. The executive director may accept an anonymous complaint or a complaint that is not a sworn statement if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.

(f) Within 15 days of the receipt of a complaint, the executive director shall review the complaint to assure that there is sufficient information to initiate an investigation and that the allegations contained in the complaint fall within the board's jurisdiction. If the complaint is against a person licensed by another board, the executive director will forward the complaint to that board not later than the 15th day after the date the agency determines that the information should be referred to the appropriate agency as provided in Government Code, Chapter 774.

(g) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the Ethics Committee. Based on its review of the complaint, the Ethics Committee may instruct the executive director to:

(1) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or

(2) advise the complainant of the additional information necessary to initiate an investigation.

(h) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(1) evaluate the threat to public health and safety documented by the complaint;

(2) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;

(3) notify all parties, as appropriate, to the circumstances of the complaint, that an investigation has been initiated, and provide a copy of the board's policy regarding the time frame for conducting an investigation; and

(4) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.

(i) The executive director will initiate the investigation of a complaint by requesting statements and evidence from all parties; by requesting that the complaint investigation be conducted by a department investigator; or may enlist the service of a private investigator.

(j) If an investigation is assigned to an investigator, the executive director will request a written report of the progress of the investigation at least two weeks before each meeting of the ethics committee until the investigation is complete and will provide a copy of the report to the committee.

(k) If an investigation uncovers evidence of a criminal act, the appropriate law enforcement officials will be notified only with approval of the executive director or the Ethics Committee. In any case, the complaint process will continue to its completion unless a written request is received from a law enforcement agency requesting that action on the complaint be delayed, stating the reason for requesting the delay, and stating an anticipated date by which that agency plans to take action on the case.

(l) If a law enforcement agency has requested a delay in the complaint process in writing, the executive director will request timely updates on that agency's progress in bringing the matter to a close.

(m) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

(n) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the

allegations within the two-week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(o) The ethics committee will review the complaint log to ensure that:

(1) complaint investigations are being handled in a timely manner;

(2) complaints are not dismissed without appropriate consideration;

(3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) any issues related to complaints which arise under the Act, or this chapter, are resolved.

(p) The ethics committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

(q) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(r) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

(s) If no violation exists or the complaint is dismissed as unsubstantiated, the complainant and the licensee or applicant shall be notified in writing of the finding. The committee may include in that notice a statement of issues and recommendations that the committee wishes to bring to the attention of the subject of the complaint.

(t) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee for authorization for an emergency suspension of the license.

§781.604. Ethics Committee Meetings and Policy.

(a) The Ethics Committee will meet on a regular basis to review and recommend action on complaints filed against social workers. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent.

(b) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number.

(c) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. Committee members, staff, consultants and licensees against whom the complaint is filed and the person filing the complaint may participate in the discussion of a complaint pending action before the committee. The committee chair or committee by vote may impose time limitations on discussion.

(d) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases will be grouped on the agenda according to their recommended disposition. Cases that are recommended for closure will be listed together as a consent agenda item. Any committee member, consultant, or staff person may remove cases from the consent agenda for individual review upon request. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(e) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a social worker has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(f) All parties to a complaint will be notified of the findings and recommendations of the committee. The respondent to a complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing

before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§781.605. Informal Hearing Meetings.

(a) Informal hearings will be scheduled for the next meeting of the Ethics Committee meeting consistent with public notice requirements. All parties to the complaint will be notified of the date and location of the informal hearing and of their right to be heard at that meeting or to submit relevant material to the committee for their review.

(b) All parties to the complaint will be given an opportunity to make a statement to the committee. Based on the evidence, the committee may revise its findings and recommendation as appropriate or reaffirm its original action. All parties to the complaint will be notified of the committee's decision.

(c) The board's legal counsel or an attorney from the department's Office of General Counsel shall attend each settlement conference.

§781.606. Licensing of Persons with Criminal Backgrounds.

(a) The board may take action against a licensee or deny a license pursuant to Texas Occupations Code, Chapter 53, concerning felony or misdemeanor convictions, or the Act, §505.451(12), concerning felony convictions.

(b) The following felonies and misdemeanors relate to licensure as a social worker because these criminal offenses indicate an inability or a tendency to be unable to perform as a social worker:

- (1) a violation of the Act;
- (2) failure to report child abuse or neglect;
- (3) a misdemeanor involving deceptive business practices;
- (4) the offense of assault or sexual assault;
- (5) the felony offense of theft; or

(6) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a social worker.

(c) An applicant or licensee with a criminal background may provide or be requested to provide documentation of rehabilitation for consideration by the appropriate committee of the board.

(d) Documentation of rehabilitation may include the following:

- (1) court records related to the conviction;
- (2) documents related to the sentence imposed by the court;
- (3) documents of completion of the sentence;
- (4) documents of satisfactory completion of probation or parole;
- (5) information about subsequent good conduct;
- (6) letters of support from employers or others who have knowledge of the applicant's accomplishments following the conviction; and
- (7) any other information that supports the applicant's qualifications for a license.
- (8) summary of the arresting event and conditions which lead to the event.

(e) The licensee may be referred to the appropriate board committee for review and determination of eligibility or monitoring requirements. Licensees referred to the board are afforded due process under the APA.

§781.607. Suspension, Revocation, or Non-renewal.

(a) If the board suspends a license or recognition, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) While on suspension, the licensee shall comply with the renewal requirements in this chapter including payment of fees and completion of continuing education; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon revocation, suspension or non-renewal of a license, a licensee shall return his or her license to the board.

(d) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§781.608. Informal Disposition.

(a) If a licensee agrees to the disciplinary action proposed by the ethics committee, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law.

(1) The licensee or applicant shall execute the order and return the signed order to the board office within 10 days of his or her receipt of the order.

(2) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(3) If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(4) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(b) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(d) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(e) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(f) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

(g) The board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

§781.609. Default Orders.

(a) If a right to a hearing is waived under §781.602(c) of this title (relating to Disciplinary Action; Notices) or §781.703(b) of this title (relating to Notice), the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) The board's legal counsel or any attorney from the department's Office of General Counsel shall attend the board meeting.

(d) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§781.610. Monitoring of Licensees.

(a) The executive director shall maintain a disciplinary action tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license or recognition shall be required to submit regularly scheduled reports at intervals appropriate to each individual situation.

(c) The executive director shall review the reports regarding licensees on monitoring as a result of formal disciplinary action and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if noncompliance occurs.

(e) The board may require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Participants of the AMEC program in accordance with §781.311 of this title (relating to Temporary License) shall be considered to be on monitoring status until released by the board and issued a regular license.

Subchapter G. Formal Hearings.

§781.701. Purpose. These rules cover the hearing procedures and practices that are available to persons or parties who request formal hearings from the board. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003, and Rules of Procedure, 1 Texas Administrative Code, Chapter 155), and to make the public aware of these procedures and practices.

§781.702. Notice.

(a) For purposes contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.

(c) The following statement shall be attached to the notice of hearing or notice of informal conference, in bold letters of at least 10 point type:

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

§781.703. Default.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, in accordance with the notice of hearing or notice of informal conference.

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the

time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(f) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

§781.704. Action After Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The department shall reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice of any reopened hearing shall be provided to all previously designated parties, by certified mail, return receipt requested.

(b) Final orders or decisions.

(1) The final order or decision of the department will be rendered by the board or its designee.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an ALJ's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the board chair, or her designee.

(c) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board.

(d) Appeals. All appeals from final department orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

Subchapter H. Sanction Guidelines.

§781.801. Purpose. The schedule of sanctions is adopted by rule pursuant to the Act, §505.254. The schedule is intended to be used by the ethics committee as a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the Board pursuant to the Government Code. The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Government Code. No two disciplinary cases are the same. This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter.

§781.802. Relevant Factors.

(a) When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction:

- (1) the degree of culpability of the licensee;
- (2) the harm caused or posed; and
- (3) appropriate deterrence.

(b) Special factors are to be considered as set forth below. It is the responsibility of the licensee to bring exonerating factors to the attention of the board or ALJ.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety or welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety or welfare of the public,

such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations and the period of time over which the violations occurred.

(2) Nature of the Violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm;

(B) the vulnerability of the person harmed, or exposed to harm;

(C) the degree of culpability of the licensee, such as whether the violation was:

- (i) intentional or premeditated;
- (ii) due to blatant disregard or gross neglect; or
- (iii) resulted from simple error or inadvertence; and

(iv) the extent to which the violation evidences lack of character, such as lack of integrity, trustworthiness, or honesty of the licensee.

(3) Personal Accountability. The following factors are identified:

- (A) admission of wrong or error, and acceptance of responsibility;
- (B) appropriate degree of remorse or concern;
- (C) efforts to ameliorate the harm or make restitution;
- (D) efforts to ensure future violations do not occur; and
- (E) cooperation with any investigation or request for information.

(4) Prevention of Violations. The following factors are identified:

(A) the sanction required to deter future similar violations by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) professional experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

§781.803. Severity Level and Sanction Guide. The following severity levels and sanction guides are based on the relevant factors in §781.802 of this title (relating to Relevant Factors):

(1) Level One--Revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The board may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year. The board may also impose an administrative penalty of not less than

\$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require termination of licensure for some period of time. The board may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The board may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The board may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

§781.804. Other Disciplinary Actions. The ethics committee or executive director, as appropriate, may resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The ethics committee or executive director, as appropriate, may also issue informal reminders to licensees regarding other licensing matters. The licensee is not entitled to a hearing on the matters set forth in the formal advisory letter or informal reminders, but may make a written response to be included with such letters in the social worker's licensing records.

§781.805. State Office of Administrative Hearings. In those cases requiring a hearing, the ethics committee, through the executive director, will issue a notice of violation letter to the licensee, and state the severity level and the

recommended sanction. The recommended sanction reflects the judgment of the ethics committee based on the information available at that time. It is recognized that the evidence presented at a hearing could indicate a greater or lesser sanction. However, an administrative law judge may not impose a sanction more than one severity level higher or lower than proposed by the ethics committee.

§781.806. Probation. If probation is ordered or agreed to, the following terms may be required.

(1) General Conditions. There are 12 general conditions of probation. They appear in all disciplinary orders of the social work board that place a licensee on probation and they are presented below:

(A) Obey all laws. The licensee shall obey all federal, state and local laws and rules governing the practice of social work in this state.

(B) Periodic reports. Under penalty of perjury, the licensee shall submit periodic reports as requested by the board on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

(C) Surveillance program. The licensee shall comply with the board's probation surveillance program.

(D) Interview with the board or its designee. The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(E) Out-of-state practice or residence. In the event the licensee should leave this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of residency or practice outside this state will not count toward the time of this probationary period. The social work licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(F) Completion of probation. Upon successful completion of probation, the licensee's license will be fully restored by the executive director. The executive director will report this information to the full board at their next scheduled meeting.

(G) Violation of probation. If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and order of recognition or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(H) Notification of practice settings. The licensee shall promptly notify all settings in which the licensee practices social work in writing of his or her probationary status.

(I) Supervision Restrictions. While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any license issued by the board.

(J) Costs of Compliance. The licensee is responsible for all costs of compliance with all conditions of probation.

(K) Renewal Requirements. The licensee shall comply with the renewal requirements in the Act and the rules of the board.

(L) General Compliance. The licensee shall follow the Act and the rules of the board.

(2) Special Conditions. There are 13 special conditions of probation. At the discretion of the board, one or more of these conditions may appear in a disciplinary order of the board that places a licensee on probation. The following conditions presented below are suggested wording for disciplinary orders.

(A) Actual Suspension. As part of probation, the license is suspended for a period of (example: one) year beginning the effective day of this order.

(B) Drug/Medication Use. The licensee shall abstain completely from the personal use or possession of controlled substances and dangerous drugs as defined by law, or any drugs requiring a prescription. Orders forbidding the licensee from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to the licensee for a bona fide illness or condition by a licensed physician.

(C) Alcohol. Abstain from Use. The licensee shall abstain completely from the use of alcoholic beverages.

(D) Body Fluid Testing. The licensee shall immediately submit to body fluid testing, at the licensee's cost, upon the written request of the board or its designee.

(E) Rehabilitation Program. Within (example: 30) days of the effective date of the order, the licensee shall submit to the board for its prior approval a rehabilitation program in which the licensee shall participate at least weekly for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall provide documented evidence of continuing participation in this program including the dates of the weekly meetings attended and the address of each meeting. At the end of the required period, the director of the program shall provide the board with documented evidence concerning the licensee's completion of the program and arrangements for appropriate follow-up.

(F) Community Service. Within (example: 60) days of the effective date of the order, licensee shall submit to the board for its prior approval a community service program in which the licensee shall provide free social work services on a regular basis to a community or charitable facility or agency for at least (example: 20) hours a month for the first (example: 24) months of probation.

(G) Medical Evaluation Treatment. Within (example: 30) days of the effective date of the order, and on a periodic basis thereafter as may be required by the board or its designee, the licensee shall undergo a medical evaluation by a board approved physician who shall furnish a medical report to the board or its designee. If the licensee is required by the board or its designee to undergo medical treatment, the licensee shall, within (example: 30) days of the requirement notice, submit to the board for its prior approval the name and qualifications of a physician of the licensee's choice. Upon approval of the treating physician, the licensee shall undergo and continue medical treatment until further notice from the board. The licensee shall have the treating physician submit periodic reports to the board as the board directs. In cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of social work until notified by the board of its determination that the licensee is medically fit to practice safely.

(H) Psychosocial/Psychological/Psychiatric Evaluation. Within (example: 30) days of the effective date of the decision, and on a periodic basis thereafter as may be required by the board or its designee, the licensee shall undergo evaluation by a licensed professional (social worker, psychologist, or psychiatrist) selected by the board. The

evaluator shall furnish a written report to the board or its designee regarding the licensee's judgment and ability to function independently and safely as a social worker and any other information as the board may require. The cost of an evaluation shall be borne by the licensee. The licensee shall execute a release of information authorizing the evaluator to release all information to the board. The evaluation shall be treated as confidential by the board. In cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of social work until notified by the board of its determination that the licensee is medically fit to practice safely.

(I) Ethics Course. Within (example: 60) days of the effective date of the order, the licensee shall select and submit to the board or its designee for prior approval a course in ethics, which the licensee shall take and successfully complete as directed by the board.

(J) Supervision of the Licensee's Practice. Within (example: 30) days of the effective date of this order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more proposed supervisors and a plan by each such supervisor by which the licensee's practice would be supervised. Each proposed supervisor shall be licensed in good standing and be a board approved supervisor with expertise in the licensee's field of practice. The supervisor shall submit written reports to the board on a quarterly basis verifying that supervision has taken place as required and including an evaluation of the licensee's performance. It shall be the licensee's responsibility to assure that the required reports are filed in a timely fashion. The licensee shall give the supervisor access to the licensee's fiscal and client records. The supervisor shall be independent, with no current or prior business, professional or personal relationship with the licensee. The licensee shall not practice until the licensee has received notification that the board has approved the licensee's choice as a supervisor. If the supervisor quits or is otherwise no longer available, the licensee shall not practice until the board has approved a new supervisor. All costs of supervision shall be borne by the licensee. Supervision shall consist of at least one hour per week in individual face-to-face meetings.

(K) Psychotherapy. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more therapists of the licensee's choice. The therapist shall possess a valid license and shall have had no current or prior business, professional or personal relationship with the licensee. Upon approval by the board, the

licensee shall undergo and continue treatment until the board determines that no further psychotherapy is necessary. The licensee shall have the treating psychotherapist submit periodic reports as determined by the board, and notify the board immediately if the therapist believes the licensee cannot safely continue to render services. All cost of therapy shall be the responsibility of the licensee. The licensee shall execute a release of information authorizing the therapist to divulge information to the board.

(L) Education. The licensee shall take and successfully complete such remedial education as the board may require.

(M) Take and Pass Licensure Examinations. The licensee shall take and pass the licensure exam currently required of new applicants for the license possessed by the licensee. The exam shall be taken on a regularly scheduled date. The licensee shall pay the established examination fee.

(N) Other Conditions. The board may order other terms of probation as may be appropriate.

§781.807. Release from Probation. On completion of the terms of board order, the licensee shall petition the executive director or board for an unrestricted license. The petition shall be in writing and shall include documentation and statements from the supervisor, if one was appointed, and any other parties designated in the terms of the board order that the terms of the board order have been fulfilled and that the licensee is qualified for unrestricted practice under the terms of the license.

(1) If the executive director is satisfied that the terms of the probation have been fulfilled, the executive director shall notify the licensee that the restrictions for the license have been removed and make a report to the board at their next scheduled meeting.

(2) If the executive director is not satisfied that the terms of the probation have been fulfilled, the executive director shall notify the licensee and shall bring the petition before the ethics committee for their review and recommendations.